APPENDIX A

Constitutional Provision, Statutes and Regulations

(a) Constitution of The United States, Amendment Thirteen:

> Sec. 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

(b) 44 Stat. 125, 42 U.S.C. Sec. 1994 (1952 ed.), derived from R.S. Sec. 1990 (14 Stat. 546):

> The holding of any person to service or labor under the system known as peonage is abolished and forever prohibited in any Territory or State of The United States; and all acts, laws, resolutions, orders, regulations or usages of any Territory or State, which have heretofore established, maintained, or enforced, or by virtue of which any attempt shall hereafter be made to establish maintain, or enforce, directly or indirectly, the voluntary or involuntary service or labor of any persons as peons, in liquidation of any debt or obligation, or otherwise, are declared null and void.

(c) Internal Revenue Code of 1939, Section 22(n), as amended by Section 8, Individual Income Tax Act of 1944, C. 210, 58 Stat. 235 (26 U.S.C. Sec. 22(n), 1952 ed):

> Sec. 22 *Gross Income.*—
>
> (n) Definition of "Adjusted Gross Income".—As used in this chapter the term "adjusted gross income" means the gross income minus—
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> * * * * *
>
> (2) *Expenses of travel and lodging in connection with employment.*—The deductions allowed by section 23 which consist of expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee;

(d) Internal Revenue Code of 1939, Section 23(a)(1)(A), as amended by Section 121 (a) of Revenue Act of 1942, C. 619, 56 Stat. 819 (26 U.S.C. Sec. 23(a)(1)(A), 1952 ed.):

Sec. 23. *Deductions from Gross Income.*

In computing net income there shall be allowed as deductions:

(a) *Expenses.*—

(1) *Trade or business expenses.*—

(A) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including . . .; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or bussiness; . . ."

(e) Internal Revenue Code of 1954, Section 162(a)(2), as enacted by Public Law 591, C. 736, 68A Stat. 45 (26 U.S.C. Sec. 162(a)(2), 1952 ed., Sup. II):

Sec. 162. *Trade or Business Expenses.*

(a) *In General.*—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

* * * * *

(2) traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and"

(f) Revenue Act of 1921, Section 214(a), C. 136, 42 Stat. 239:

Sec. 214. (a). That in computing net income there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade of business, including . . .; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; . . ."

(g) Internal Revenue Code of 1939, Section 24(a)(1), as amended by Section 127(b) of Revenue Act of 1942, C. 619, 56 Stat. 826 (26 U.S.C. Sec. 24(a)(1), 1952 ed.):

Sec. 24. *Items Not Deductible.*

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses, except extraordinary medical expenses deductible under section 23(x);"

(h) Internal Revenue Code of 1954, Section 262, as enacted by Public Law 591, C. 736, 68A Stat. 76 (26 U.S.C. Sec. 262, 1952 ed., Sup. II):

Sec. 262. *Personal, Living, and Family Expenses.*

Except as otherwise expressly provided in this chapter, no deduction shall be allowed for personal, living, or family expenses.

(i) Revenue Act of 1921, Section 215(a), C. 136, 42 Stat. 242:

Sec. 215. (a). That in computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living or family expenses;

(j) Treasury Regulation 118, Section 39.22(n)-1, promulgated under Internal Revenue Code of 1939, 26 C.F.R. (1953 Revision) Section 39.22(n)-1:

Sec. 39.22(n)-1. *Adjusted gross income.*

(a) The term "adjusted gross income" means the gross income computed under section 22 minus such of the deductions allowable under Section 23 as are specified in section 22(n) . . .

(b) Section 22(n) does not create any new deductions, but merely specifies which of the deductions provided in section 23 shall be allowed in computing adjusted gross income. The circumstances that a particular item is specified in one of the clauses under section 22(n) and is also embraced within the terms of another of such clauses does not permit the item to be twice deducted in computing adjusted gross income.

(e) The deductions specified in section 22(n) for the purpose of computing adjusted gross income are: (1) Deductions allowable under section 23, which are attributable to a trade or business carried on by the taxpayer not consisting of services performed as an employee; (2) deductions allowable by section 23 which constitute expenses of travel, meals, and lodging while away from home, paid or incurred by the taxpayer in connection with the performance by him of services as an employee; . . .

(k) Treasury Regulations 118, Section 39.23(a)-1, promulgated under Internal Revenue Code of 1939, 26 C.F.R. (1953 Revision) Section 39.23(a)-1:

Sec. 39.23(a)-1. *Business expenses.* Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, except items which are used as the basis for a deduction or a credit under provisions of law other than subsection (a) of section 23. Double deductions are not permitted. Amounts deducted under one provision of the Internal Revenue Code cannot again be deducted under any other provision thereof. . . . Among the items included in business expenses are . . . traveling expenses while away from home solely in the pursuit of a trade or business . . .

(l) Treasury Regulation 118, Section 39.23(a)-2, promulgated under Internal Revenue Code of 1939, 26 C.F.R. (1953 Revision) Section 39.23(a)-2:

Sec. 39.23(a)-2. *Traveling expenses.* (a) Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses.

* * * * *

(f) Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted.

(m) Treasury Regulation 103, Section 19.23(a)-2, promulgated under Internal Revenue Code of 1939, 26 C.F.R. (1940 Supp.) Section 19.23(a)-2:

Section 19.23(a)-2 *Traveling Expenses.*

Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses.

* * * * *

(c) . . . Only such expenses as are reasonable and necessary in the conduct of the business and directly attributable to it may be deducted.

APPENDIX B

Examples of Expenses Other Than Travel Expenses Requiring a Factual Determination of Their Personal Character Under Section 24(a)(1)

(a) Medical expenses:

Vincent P. Ring, 23 T.C. 950 (1955).

In this case the court said (23 T.C. at p. 953):

". . . Whether a living expense falls within section 24(a)(1) or the exception in section 23(x) is a factual question."

(b) Entertainment expenses:

Richard A. Sutter, 21 T.C. 170 (1953).

(c) Legal expenses:

Northern Trust Co. v. *Campbell*, 211 F. 2d 251 (7th Cir. 1954).

(d) Business expenses as opposed to hobby expenses:

Coffey v. *Commissioner*, 141 F. 2d 204 (5th Cir. 1944).

APPENDIX C

Examples of Expenses Which Were Held To Be Not Deductible But Are Not Personal

(a) Nondeductible fines and penalties paid in connection with operation of a business:

Great Northern Railway Co. v. *Commissioner*, 40 F. 2d 372, 373 (8th Cir. 1930).

(b) Nondeductible unreasonable salaries paid in connection with operation of a business:

Cooke v. *Commissioner*, 203 F. 2d 258, 262 (10th Cir. 1953), *cert. denied* 346 U.S. 815 (1953).

(c) Nondeductible lobbying expenses paid in connection with operation of a business:

Textile Mills Security Corp. v. *Commissioner*, 314 U.S. 326, 337 (1941).

(d) Nondeductible expenses which frustrate public policy paid in connection with operation of a business:

Hoover Motor Express Co. v. *United States*, 356 U.S. 38 (1958).

APPENDIX D

Illustrative Cases Involving Housing Shortage Problem (Chronologically Arranged)

(a) *York* v. *Commissioner*, 160 F. 2d 385 (D.C. Cir. 1947).

Petitioner was an attorney who accepted government employment in Washington, D. C. He left his home in Atlanta in September, 1942 and could not find housing accommodations until February, 1943. Deduction denied on grounds home was deemed synonymous with place of business.

(b) *Jeter L. Bryson*, P-H T.C. Mem. Dec., Par. 48,016 (1948).

Petitioner was crane operator at shipyard during war. Housing accommodations were not available. Held, employment was indefinite.

(c) *Bercaw* v. *Commissioner*, 165 F. 2d 521 (4th Cir. 1948).

Petitioner was army officer and was given a duty assignment at Fort Meade, Maryland. There were no quarters for his family. His quarters were furnished rent free by the Army. Deductions for meals denied on grounds place of duty became his "home".

(d) *Ney* v. *United States*, 171 F. 2d 449 (4th Cir. 1948).

Petitioner accepted employment with O.P.A. in Washington, D. C. on July 1, 1942 and held this job until December 31, 1945. Housing was not available in Washington. Deduction was denied on grounds employment was indefinite.

(e) *E. G. Leach*, 12 T.C. 20 (1949).

Petitioner was a structural steel worker engaged in construction. He was away from home for 49 weeks in the taxable year on several jobs lasting from a few weeks to several months and housing accommodations were not available at the job sites. His wife and child resided at "home". Deduction was *allowed* because of "shortness and indefiniteness" of employment.

(f) *Henry C. Warren*, 13 T.C. 205 (1949).

Petitioner was a pipe fitter and worked in U. S. Navy Yard at Charleston, South Carolina for 2 years during war years. He maintained a home at Cornelia, Georgia in which his wife and children resided. Deduction was denied on grounds employment deemed indefinite.

(g) *Willard S. Jones*, 13 T.C. 880 (1949).

Petitioner was a union sheet metal worker who worked on atomic energy plant construction at Oak Ridge, Tennessee for 30 months. He maintained a home in Bakewell, Tennessee in which his wife resided. Deduction was denied on grounds employment deemed indefinite.

*(h) *A. Gilbert Formel*, P-H T.C. Mem. Dec., Par. 50,221 (1950).

Petitioner was a construction engineer sent to Russia in 1943 to help build a gasoline refinery. War restrictions prevented his family from accompanying him. He was away 2½ years. He rented an apartment for his wife and child on Long Island, New York. Deduction was denied on grounds employment deemed indefinite.

(i) *Donald B. Lipsey*, P-H T.C. Mem. Dec., Par. 52,156 (1952).

Petitioner accepted permanent employment in New York City while maintaining a home in Binghamton, New York. Housing not immediately available. Deduction denied on grounds expenses were personal.

*(j) *James R. Whitaker*, 24 T.C. 750 (1955).

Petitioner was an engineer and worked on an offshore construction project in Thule, Greenland. He was in Thule from December 15, 1951 to January 5, 1952; from April 8, 1952 to August 12, 1952; from August 29, 1952 to November 26, 1952. He returned to Thule in January, 1953 and April, 1953. He was not permitted to take his family and his destination was a military secret. Deduction denied on grounds employment deemed indefinite.

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* Indicates cases which petitioners believe were erroneously decided.

APPENDIX E

Illustrative Cases Which Have Improperly Denied Taxpayers a Deduction for Travel Expenses by Applying the Doctrine That Home Is Synonymous With a Place of Indefinite Employment (Alphabetically Arranged)

(a) *Michael J. Carroll*, 20 T.C. 382 (1953).

Petitioner was a banking and tax consultant employed by War Department to advise government of South Korea. Petitioner was in Seoul, Korea for almost a year.

(b) *Kermit L. Claunch*, 29 T.C. No. 109, appealed to 5th Cir. 7-21-58 (P-H 1958 Fed. Taxes, Par. 56,425).

Petitioner is a boilermaker. He resides at Jasper, Alabama and returns there upon completion of jobs. He worked on a construction site at Rome, Georgia from April, 1953 to April, 1955. This period of employment was twice interrupted by strikes.

(c) *Herman C. Ford*, P-H T.C. Mem. Dec., Par. 54,314 (1954), *aff'd* 227 F. 2d 297 (4th Cir. 1955).

Petitioner was a superintendent journeyman plumber. He maintained a home in Roanoke, Virginia. He has been an employer of Rust Company of Pittsburgh, Pennsylvania since 1944. He works on construction jobs all over the country whereever he is sent by his employer. Employment in controversy lasted a little over 2 years.

(d) *Wesley Hanson Harrington*, P-H T.C. Mem. Dec., Par. 53,139 (1953).

Petitioner was a field accountant on construction jobs. He worked for 25 years for same company. Length of time at any one location was 10 to 18 months. He was frequently "pulled off" jobs before their completion.

(e) *Willard S. Jones*, 13 T.C. 880 (1949).

See summary in Appendix D, p. 7a.

(f) *Winifred Kapp*, P-H T.C. Mem. Dec., Par. 58,072 (1958).

Taxpayer was a millwright. He lived in Springfield, Missouri for 17 years. He went to work for same firm in Denver, Colorado when local mill closed but did not move his home. During taxable year he worked at various company mills other than Denver as follows:

February 13, to March 3 at Wilson, Kansas
March 4 to April 12 at Hays, Kansas
April 13 to April 18 at Sterling, Colorado

May 10 to June 25 at Ft. Collins, Colorado
June 26 to July 11 at Lamar, Colorado

No travel expenses were allowed although his employer reimbursed him for expenses away from Denver.

(g) *Walter G. Pauley,* P-H T.C. Mem. Dec., Par. 54,298 (1954).

Petitioner was employed for 3 specific construction projects as a civil engineer. Jobs lasted 3 months, 1 year and 18 months, respectively. He maintained a residence in Chicago, Illinois. The job sites were in various locations in the country.

(h) *Vern Wallace Pratt,* P-H T.C. Mem. Dec., Par. 52,097 (1952).

Petitioner was a journey man plumber and a union member who followed heavy construction. He maintained a residence at Pryor, Oklahoma. The employment periods in controversy were 6 weeks and 4 months respectively.

(i) *Albert P. Tiernan,* P-H T.C. Mem. Dec., Par. 55,059 (1955).

Petitioner was union electrical worker and received employment through his union local with headquarters in Syracuse, New York. He resided with his wife and children in Felts Mills, New York. He worked in Schenectady, New York from sometime in 1947 to August, 1949. He worked in Troy, New York from August, 1949 to October 1949. He worked in Saugerties, New York from October, 1949 until later in 1949. He worked in Andes, New York for the remainder of 1949. The Court held his employments at Troy, Saugerties and Andes were temporary but his employment at Schenectady was indefinite.

(j) *James R. Whitaker,* 24 T.C. 750 (1955).

See summary in Appendix D p. 8a.

APPENDIX F

Cases Which Have Denied Taxpayers a Travel Expense Deduction on Theory Employment Was Indefinite (Chronologically Arranged)

*April 29, 1946	*Arnold P. Bark*, 6 T.C. 851, 855. (3 judges dissented).
*April 29, 1946	*S. M. R. O'Hara*, 6 T.C. 841, 845. (4 judges dissented).
February 14, 1947	*John D. Johnson*, 8 T.C. 303, 308.
December 24, 1948	*Ney* v. *United States*, 171 F. 2d 449, 453. (4th Cir.)
July 22, 1949	*Beatrice H. Albert*, 13 T.C. 129, 131.
August 12, 1949	*Henry C. Warren*, 13 T.C. 205, 208.
September 29, 1949	*Alexander Milne, Jr.*, P-H T.C. Mem. Dec., Par. 49,231 at p. 750.
*October 11, 1949	*John E. Giffels*, P-H T.C. Mem. Dec., Par. 49, 257 at p. 833.
*December 1, 1949	*Willard S. Jones*, 13 T.C. 880, 882. (2 judges dissented).
January 28, 1950	*Andrews* v. *Commissioner*, 179 F. 2d 502, 504 (4th Cir.)
*July 19, 1950	*Ralph A. Waugh*, P-H T.C. Mem. Par. 50, 175 at p. 548.
*February 27, 1952	*Conrad P. Stephan*, P-H T.C. Mem. Dec., Par. 52,050 at p. 160.
*April 16, 1953	*Albert E. Bennett*, P-H T.C. Mem. Dec., Par. 53,126 at p. 386.
*May 20, 1953	*Michael J. Carroll*, 20 T.C. 382, 384.
*October 6, 1953	*Jim McNamee*, P-H T.C. Mem. Dec., Par. 53,326 at p. 1017.
*May 17, 1954	*Walter McBreen*, P-H T.C. Mem. Dec., Par. 54,148 at p. 480.
*November 16, 1954	*Walter G. Pauly*, P-H T.C. Mem. Dec., Par. 54,298 at p. 953.
*November 30, 1954	*John J. Morley*, P-H T.C. Mem. Dec., Par. 54,311 at p. 988.

*November 30, 1954	*Herman C. Ford*, P-H T.C. Mem. Dec., Par. 54,314 at p. 994, *aff'd* 227 F. 2d 297 (4th Cir. 1955).
*March 11, 1955	*Albert P. Tiernan*, P-H T.C. Mem. Dec., Par. 55,059 at p. 162.
*July 26, 1955	*James R. Whitaker*, 24 T.C. 750, 754.
*December 31, 1956	*Arthur Kleinfelder*, P-H T.C. Mem. Dec., Par. 56,282 at p. 1199.
*May 17, 1957	*Roy J. Coffman*, P-H T.C. Mem. Dec., Par. 57,080 at p. 301.
*February 28, 1958	*Kermit L. Claunch*, 29 T.C. No. 109 at p. 6 (*appl'd* to 5th Cir. 7-21-58, 1958 P-H Fed. Taxes, Par. 56,425).
*April 24, 1958	*Winifred Kapp*, P-H, T.C. Mem. Dec., Par. 58,072 at p. 305.
*April 30, 1958	*Estil L. Cook*, P-H T.C. Mem. Dec., Par. 58,076 at p. 320.
May 29, 1958	*Leroy K. Stout*, P-H T.C. Mem. Dec., Par. 58,102 at p. 445.
June 17, 1958	*Harry Scott*, P-H T.C. Mem. Dec., Par. 58,113 at p. 529.

* Indicates cases which petitioners believe were erroneously decided.

APPENDIX G

Cases Substantially on All Fours With the Instant Case Which Have Allowed Travel Expenses as a Deduction (Chronologically Arranged)

(a) *Harry F. Schurer*, 3 T.C. 544 (1944).

Petitioner was a journeyman plumber and a union member and obtained employment through his union. He was employed on construction jobs lasting 4 weeks, 9 weeks and 33 weeks, respectively for the taxable year.

(b) *E. G. Leach*, 12 T.C. 20 (1949).

Petitioner was a structural steel construction worker. He was away for 49 weeks in taxable year on several construction jobs.

(c) *John Auer*, P-H T.C. Mem. Dec., Par. 52,335 (1952).

Petitioner was a construction mechanic for Diesel motors. Away from home 32 weeks in taxable year

(d) *Lewis F. Cooper*, P-H T.C. Mem. Dec., Par. 53,149 (1953).

Petitioner was journeyman steamfitter who obtained employment through his union. Duration of employment not stated but characterized as short and temporary.

(e) *T. G. Frazier, Jr.*, P-H T.C. Mem. Dec., Par. 53,325 (1953).

Petitioner worked on oil pipe line installations. He obtained employment through a foreman. His employments lasted 26 weeks and 8 weeks, respectively.

(f) *Jos. P. Selby*, P-H T.C. Mem. Dec., Par. 55,005 (1955).

Petitioner was accountant with construction company. His employment lasted 7 months.

(g) *Robert K. Denning*, P-H T.C. Mem. Dec., Par 55,210 (1955).

Petitioner was steamfitter who obtained his employment through his union. He worked on three different jobs lasting 3 months, 5 months and 7 weeks, respectively.

(h) *Ralph A. Stegner*, P-H T.C. Mem. Dec., Par. 55,276 (1955).

Petitioner was journeyman plumber who obtained his employment through his Union. Petitioner was continuously employed on one construction job for 55 weeks.

(i) *Albert A. Loden*, P-H T.C. Mem. Dec., Par. 56,029 (1956).

Petitioner was electrician who obtained employment through his union. His employments lasted 8 months, 4½ months and 4 months, respectively.

(j) *Peter F. Janss*, P-H T.C. Mem. Dec., Par. 57,084 (1957).

Petitioner was a construction laborer who accepted summer employments when not attending school.

APPENDIX H

Cases Which Have Allowed a Deduction for Travel Expenses for Periods of Employment Longer Than 8½ Months

(a) *Phillip D. Graham*, P-H T.C. Mem. Dec., Par. 53,206 (1953).

Petitioner was booking agent. 9½ months

(b) *Charles G. Gustafson*, 3 T.C. 998 (1944).

Petitioner was a salesman. 1 year

(c) *Special Letter Ruling of May 4, 1956*, 1956 P-H Fed. Taxes, Par. 76,519.

Applicable to construction workers. 1 year

(d) *Ralph A. Stegner*, P-H T.C. Mem. Dec., Par. 55,276 (1955).

Petitioner was journeyman plumber. 55 weeks

(e) *Chester D. Griesemer*, 10 B.T.A. 386 (1928).

Petitioner was employee sent to foreign office of his employer. 3 years

APPENDIX I

Cases Illustrating Various Theories Implemented to Characterize Employment as Not Temporary

(a) Employments held not temporary because termination within a short and fairly definite period not foreseeable:

**Albert E. Bennett*, P-H T.C. Mem. Dec., Par. 53,126 (1953).

**Herman C. Ford*, P-H T.C. Mem. Dec., Par. 54,314 (1954), *aff'd* 227 F. 2d 297 (4th Cir. 1955).

(And other cases)

(b) Employments held not temporary because of lack of evidence to show termination within a short period to be probable:

Beatrice H. Albert, 13 T.C. 129 (1949).

(c) Employments held not temporary because actual period of employment was not "short":

**Willard S. Jones*, 13 T.C. 880 (1949).
**James R. Whitaker*, 24 T.C. 750 (1955).
**Michael J. Carroll*, 20 T.C. 382 (1953).

(And other cases)

(d) Employments held not temporary because original temporary employment became indefinite:

**John E. Giffels*, P-H T.C. Mem. Dec., Par. 49,257 (1949).
**Ralph A. Waugh*, P-H T.C. Mem. Dec., Par. 50,175 (1950).

(And other cases)